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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kapalua Land Company, Ltd.

Petitioner

v.

Kapalua Strickwaren GmbH Ltd.

Respondent

Cancellation No. 92/040,092

PAPERS FILED:

1. Petitioner's Motion for Summary Judgment;
2. Memorandum in Support of Petitioner's Motion for Summary Judgment

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Docket No.: **500162**
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Gary D. Krugman
Leigh Ann Lindquist

Date: June 13, 2006

(Please return receipt to Annette Spriggs - 6th Floor. Thank you.)

06-13-2006


U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kapalua Land Company, Ltd.)	
)	
Petitioner)	Cancellation No. 92/040,092
)	
v.)	Petitioner's Motion
)	For
Kapalua Strickwaren GmbH Ltd.)	Summary Judgment
)	
Respondent)	
)	
)	
)	

NOW COMES THE PETITIONER and moves this Honorable Trademark Trial and Appeal Board, pursuant to Rule 2.127 of the Trademark Rules of Practice and Rule 56(c) of the Federal Rules of Civil Procedure for Summary Judgment there being no genuine issue as to any material facts remaining in this case as more fully set forth in the Memorandum in Support of Petitioner's Motion for Summary Judgment filed concurrently herewith.

Respectfully submitted,



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Date: June 13, 2006

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Kapalua Land Company, Ltd.)	
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Petitioner)	Cancellation No. 92/040,092
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v.)	
)	
Kapalua Strickwaren GmbH Ltd.)	
)	
Respondent)	
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)	

**MEMORANDUM IN SUPPORT OF
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

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June 13, 2006

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Kapalua Strickwaren GmbH Ltd.)	For Summary Judgment
)	
Respondent)	
)	
)	
)	

INTRODUCTION

Petitioner, Kapalua Land Company, Ltd. (hereinafter "KLC" or Petitioner) moves this Honorable Trademark Trial and Appeal Board for a Summary Judgment on the captioned Cancellation action under Trademark Rule of Practice 2.127 and Rule 56 of the Federal Rules of Civil Procedure. The motion is timely, as the Petitioner's testimony period does not open until June 15, 2006. Indeed, the Respondent¹ has only recently, on May 22, 2006, served its Answer to the Petitioner's First Amended Petition To Cancel.

The basis for the Motion is the abandonment of Registration No. 2,016,976 without the consent of the Petitioner, and the fraud on the Trademark Office committed by Respondent in the filing of a false Declaration of Use under §8 of the Lanham Act averring that it has used the mark in the registration in the United States on "all" of the

¹ Respondent has been identified as the "registrant" of both of the registrations sought to be cancelled in this action. (Kapalua Strickwaren GmbH Ltd.) However, there has been a recorded assignment to Interfashion Ltd. B.V.I. for both registrations and apparently many more assignments of Registration No. 2,115,124. None of these purported additional assignments are recorded in the Trademark Office and Respondent has not formally advised the Board or Petitioner of the assignments, nor corrected the references in answering the Petition To Cancel or the First Amended Petition To Cancel. It appears from the Declaration of Use filed against Registration No. 2,115,124 that the present owner is a German Company named Style & Spirit GmbH.

goods listed in Registration No. 2,115,124 when in fact it admits that it has not made use of the mark on all of the goods identified in the registration.

There are no genuine issues as to the material facts relative to the non-use of the marks as they are conceded and Petitioner is entitled to judgment as a result of the Respondent's fraud on the Trademark Office.

BACKGROUND

KLC filed its Petition To Cancel on July 9, 2001. No Answer was filed and the parties agreed to suspend the proceeding in an effort to reach an amicable solution. After several stipulated extensions of time to resolve the matter it became apparent that a settlement was not in reach. On August 17, 2005, the Trademark Trial and Appeal Board ("Board") reinstated the cancellation proceeding. Respondent Answered the Petition to Cancel on August 31, 2005. Initial discovery began.

On January 31, 2006, Respondent filed a motion for an extension of the dates asserting that it had changed counsel and ownership (though what the change in ownership was not revealed and the company Style & Spirit GmbH, purportedly the current owner had filed the Declaration of Use on May 24, 2004). Also on January 31, 2006, Petitioner filed a Motion to Amend its Petition To Cancel and filed its First Amended Petition To Cancel including a Count for Fraud, based on the evidence that the Respondent had not used its mark on all of the goods at the time it filed its Declaration of Continued Use for Registration No. 2,115,124.

The Board granted both Motions on April 20, 2006. The Petitioner's Testimony Period was set to end on July 15, 2006. No further discovery was undertaken.

Petitioner now files this Motion for Summary Judgment.

MATERIAL FACTS NOT IN ISSUE

Registration No. 2,016,976

1. Registration No. 2,016,976 issued on November 19, 1996. It covers goods in Classes 3 for “laundry bleach and laundry detergent, perfumes, essential oils for personal use, lipstick, rouge, eyeliner, hair lotion, and dentifrice” and in Class 25 for “footwear, headwear, gloves.” (Registration No. 2,016,976.)
2. The affidavit of use under §8 of the Lanham Act (15 U.S.C. § 1058) for Registration No. 2,016,976 was due between November 19, 2001, and November 19, 2002.
3. On May 16, 2003, with a late fee and within the grace period for filing the affidavit, Respondent, (then Interfashion Ltd B.V.I.) through its attorney acting under a power of attorney from Respondent, filed a Declaration of Excusable Non-Use of the mark in Registration No. 2,016,976. (Declaration of Non-Use dated May 16, 2003.)
4. The Post-Registration Office rejected the Declaration as not providing an acceptable excusable non-use situation. (Post-Registration Office, Office Action dated July 12, 2004.)
5. The Respondent replied on January 26, 2005, by which time it appears that the registration had been assigned, though the fact of the assignment was not revealed to the Trademark Office. (Declarant’s Response to Post-Registration Office, Office Action, January 26, 2005.)

6. The Post-Registration Office maintained its rejection of the Declaration of Excusable Non-Use in its Office Action dated October 14, 2005, allowing Respondent six months to further respond. (Post-Registration Office, Office Action, October 14, 2005.)
7. Respondent has not responded to the Post-Registration Office and declares it has abandoned its Registration No. 2,016,976. (Answer to First Amended Complaint ¶ 5.)
8. Respondent did not request Petitioner's acquiescence to the abandonment of the registration and Petitioner gave no consent to the abandonment.
9. Respondent never sold the goods claimed in Class 3 of Registration No. 2,016,976 and never sold "footwear" as claimed in Class 25 of Registration No. 2,016,976. (Respondent's Response to Petitioner's First Set of Admissions To Respondent, responses 10, 11, 12, 15 through 23 and 26 attached hereto.)
10. Respondent had never sold any of the goods in Class 3 in Registration No. 2,016,976 anywhere in the world. (Exhibit 1, Respondent's Response to Petitioner's First Set of Admissions To Respondent, response No. 39.)
11. When it filed its Declaration for Excusable Non-Use, the Declarant had not used the mark for any of the goods in Class 3 and for "footwear" in Class 25 for over five years prior to the filing of this Petition to Cancel on July 9, 2001, and the Declaration of Excusable Non-Use was false, asserting that the non-use was as a result of this pending cancellation proceeding.

Registration No. 2,115,124

12. Registration No. 2,115,124 issued on November 25, 1997 for “clothing, namely, dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, socks, underwear, shoes, gloves, and hats” in Class 25. (Registration No. 2,115,124.)
13. An affidavit of continuous use for Registration No. 2,115,124 was due between November 25, 2002, and November 25, 2003. A Declaration of Continuous Use for all of the goods in Registration No. 2,115,124 was filed, by the Declarant’s U.S. attorney on May 21, 2004, with a late fee, within the grace period and under a power of attorney from the Declarant. The Declarant was Style & Spirit GmbH, a party other than the recorded owner of the registration. (Declaration under §8 filed May 21, 2004.)
14. On January 5, 2005, the Post-Registration Office rejected the Declaration because it was filed by other than the recorded owner of the registration. The Declarant was given the opportunity to file assignments with the Assignment Division or to provide documents evidencing the assignment(s) to the Post-Registration Office. (Post-Registration Office, Office Action, January 5, 2005.)
15. On July 12, 2005, the Declarant’s attorney filed a response listing a chain of title for the registration from the recorded owner to the Declarant. (Declarant’s Response to Post-Registration Office, Office Action, July 12, 2005.)

16. On November 29, 2005, the Post-Registration Office again rejected the Declaration stating, in part:

If the present owner prefers to *submit actual evidence of ownership* directly to the undersigned paralegal, copies of the actual documents transferring title or a statement explaining the valid transfer of legal title must be submitted. **If submitting a statement of facts explaining the transfer of title, this statement must be verified with an affidavit or a signed declaration under 37 C.F.R. §2.20. See 37 C.F.R. §3.73 and TMEP §502.**

Please note that the acceptance notice for the Section 8 Affidavit will not issue in the name of the current owner unless ownership documents are recorded with the Assignment Division. 37 C.F.R. §3.85; TMEP §502.02.

(Post-Registration Office, Office Action, November 29, 2005.)

17. On May 30, 2006, the Post-Registration Office received a response for the Declarant, listing the same chain of title transfers as were previously submitted signed by the Managing Director of the Declarant under a 37 C.F.R. §2.20 declaration statement. (Declarant's Response to Post-Registration Office, Office Action, May 30, 2006.)
18. No documents supporting the assignments were submitted to the Post-Registration Office as requested and it appears that no assignments have been filed with the Assignment Division.
19. Respondent has never sold "socks", "underwear" or "shoes" in the United States bearing the trademark KAPALUA, which are goods it claims in

Registration No. 2,115,124. (Exhibit 1, Respondent's Response to Petitioner's First Set of Admissions To Respondent, responses 10, 11, 12 and 26.)

20. Respondent asserts it has only used the mark Kapalua for "pullovers, T-shirts and skirts." (Exhibit 2, Respondent's Answers to Petitioner's First Set of Interrogatories To Respondent, answers to Interrogatories No. 3 and No. 4 attached hereto.)

21. The time for filing a Declaration of Use relative to Registration No. 2,115,124 has expired.

ARGUMENT

Summary judgment is appropriate when there are no genuine issues as to any material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1987). The evidence is to be viewed in a light most favorable to the non-moving party. Opryland USA, Inc. v. The Great American Music Show, Inc., 970 F. 2d 847 (Fed. Cir. 1992). In this case there remains no genuine issues to any material fact and when the facts are viewed in a light most favorable to the Respondent, the conclusion is that the Petition to Cancel should be granted.

Registration No. 2,016,976

Registration No. 2,016,976 is for goods in Classes 3 and 25. The goods in Class 3 are for "laundry bleach and laundry detergent, perfumes, essential oils for personal use, lipstick, rouge, eyeliner, hair lotion, and dentifrice." The registration issued on November 19, 1996. An Affidavit of Use was due between November 19, 2001 and November 19, 2002. On May 16, 2003, Respondent filed with the Post-Registration

Office a Declaration of Excusable Non-Use, along with a grace period late fee seeking to have its mark maintained on the Register based on its excusable non-use. The Declaration was false; as the non-use had continued from prior to the date of registration through the date the §8 declaration was due. Statement Of Fact No. 6. Moreover, the Post-Registration Office rejected the reasons for the non-use as not excusable reasons. Respondent now advises that the Registration has been abandoned by it.

The Petitioner's First Amended Petition To Cancel, states:

Count I - ABANDONMENT

1. On information and belief, KSG does not use the mark KAPALUA in the United States on the goods identified in Registration No. 2,016,976, has not done so for more than three years and has no intention to use the mark on those goods in the future. On information and belief, KSG does not use the mark KAPALUA in the United States on the goods identified in Registration No. 2,115,124 and has not used the mark on such goods for more than three years and has no intention to use the mark on those goods in the future.

In its Answer to allegation paragraph 5, Respondent states:

ANSWER

Registrant has allowed Registration No. 2,016,976 to be cancelled and, therefore, the allegation regarding this registration is moot and no response is required. Registrant denies the allegations regarding Registration No. 2,115,124.

Answer to First Amended Petition To Cancel.

It is clear that there are no genuine issues as to the fact that the mark and the registration have been abandoned. Respondent did not and could not respond to the Post-Registration Office that it had used its mark and had no excusable reason for not using the mark. Moreover, Respondent filed a false Declaration of Excusable Non-Use.

Respondent's abandonment of the registration comes after the filing of the Petition and the Amended Petition and without the consent of Petitioner. Pursuant to Trademark Rule § 2.134(a) when there is a voluntary cancellation of the registration by the Respondent without the consent of the Petitioner after the Cancellation proceeding has commenced "judgment shall be entered against the Respondent."

For all of these reasons Judgment canceling the Registration should be entered against Respondent on all of the claims in the Amended Petition.

Registration No. 2,115,124

FRAUDULENT AFFIDAVIT OF USE

The First Amended Petition to Cancel and the Respondent's Answer state:

Count IV - FRAUD on the Patent and Trademark Office, Reg. No. 2,115,124

13. On May 19, 2004, Respondent filed its Declaration of Continued Use for Registration No. 2,115,124. Attached as Exhibit A is that filing. In that filing, Respondent declared that it was using the mark on all of the goods listed in the registration as of May 19, 2004.

ANSWER:

Admitted.

Registration No. 2,115,124 is for goods in Class 25, "clothing, namely, dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, socks, underwear,

shoes, gloves, and hats.” Neither the Respondent nor any companies in the purported chain of title for the registration have used the mark on “socks, underwear, shoes” set forth in the identification of goods. Statement of Facts Nos. 14 and 15. Respondent has filed a Declaration of Use asserting use on *all* of the goods in the registration. Statement of Facts No. 9. Respondent filed the Declaration subsequent to the institution of this proceeding and has maintained it throughout. The Declaration is false and therefore fraudulent and the Registration should be cancelled. Western Farmers Ass’n v. Loblaw, Inc., 180 USPQ 345, 346-47 (TTAB 1973); Medinol Ltd. v. Neuro Vasx, Inc., 67 U.S.P.Q. 2d 1205 (TTAB 2003).

The fraudulent filing of the Declaration of Use was determined through discovery and was, therefore, alleged in the First Amended Petition To Cancel which states:

Count IV - FRAUD on the Patent and Trademark Office, Reg. No. 2,115,124

12. Respondent has committed fraud on the Patent and Trademark Office in its filing of its Section 8 Affidavit.
14. On May 19, 2004, Respondent filed its Declaration of Continued Use for Registration No. 2,115,124. Attached as Exhibit A is that filing. In that filing, Respondent declared that it was using the mark on all of the goods listed in the registration as of May 19, 2004.
22. Respondent filed its Section 8 declaration and fraudulently declared it was using its mark on all the goods listed in Registration No. 2,115,124, namely, clothing, namely, dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, socks, underwear, shoes, gloves, and hats. In its

verified answers to Interrogatories served and answered in this case,

Respondent indicated that it had only used the mark on pullovers, t-shirts and skirts.

23. By filing the incorrect Section 8 declaration, Respondent has committed fraud on the Patent and Trademark Office.

In its Answer to the First Amended Petition the Respondent "Admitted" allegation paragraph 14, to the allegation in paragraph 17 answered: "Registrant denies that it fraudulently declared it was using its mark on all the goods listed in Registration No. 2,115,124. Registrant admits that in its verified answers to Interrogatories served and answered in this case, it stated that it had only used the mark on "pullovers, t-shirts and skirts." The Respondent "Denied" the allegations in paragraphs 12 and 18 of the First Amended Petition To Cancel.

Subsequent to filing its amended petition, Petitioner received answers to its First Set of Requests for Admissions on Respondent. In those requests were the following:

10. Admit that Respondent has never sold or offered for sale socks under the mark KAPALUA in the United States.
11. Admit that Respondent has never sold or offered for sale underwear under the mark KAPALUA in the United States.
12. Admit that Respondent has never sold or offered for sale shoes under the mark KAPALUA in the United States.

Respondent admitted each of these Requests.

It is clear that the Declaration of Use asserting use on all of the goods in the registration was false. The filing of a false Declaration is fraud on the Trademark Office

for which the remedy is the cancellation of the registration. Medinol Ltd. v. Neuro Vaxx, Inc., supra; Western Farmers Ass'n v. Loblaw, Inc., supra, See also, G. B. Kent & Sons, Ltd. v. Colonial Chem. Corp., 162 USPQ 557 (TTAB 1969).

There are no genuine issues as to any material facts in this matter. The Declaration of Use is false, filed with the intent that the Trademark Office should rely on it for the maintenance of the registration and is, therefore, fraudulent. The Registration should be cancelled.

THE REGISTRATON IS ABANDONED

Registration No. 2,115,124 also appears to be abandoned. Respondent and its successor(s) have failed to meet the requirements of the Post-Registration Office requiring that documents in support of the purported assignments be provided and has not filed the assignments with the Assignment Division as required by the Office and the time for filing an Affidavit of Use under §8 of the Lanham Act, has long passed.

On May 21, 2004, a late-filed Declaration was filed on behalf of an entity by the name of Style & Spirit GmbH by its attorney with a power of attorney to file the Declaration. The Post-Registration Office rejected the Declaration, as there was an apparent break in the chain of title. The attorney responded laying out a tortuous route of assignments from the registrant to Style & Spirit. However, the chain set forth by the attorney was not verified and no assignment documents were presented or filed. The Post-Registration Office again rejected the Declaration on November 29, 2005, granting yet another six-month response period for the owner to produce the appropriate documentation showing its ownership of the registration. On May 30, 2006, a response was recorded by the Post-Registration Office in which the Declarant, by a purported

officer of the party now claiming ownership of the registration, sets forth the same lengthy chain of title under a Declaration, but still no assignment documents appear to have been filed and no documents in support of the purported Chain of Title have been provided to the Post-Registration Office, or for that matter to Petitioner or the Board. It appears that the registration is, or should be cancelled as abandoned for failure to comply with the Post-Registration requirements and the timely filing by the owner of the mark of a Declaration of Use. Again, no consent to abandonment was sought or granted by Petitioner.

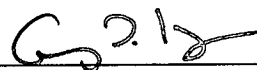
If abandoned, Petitioner is entitled to a judgment on all of the claims in the First Amended Petition to Cancel and in any event cancellation of the registration is appropriate because of the fraud on the Trademark Office.

CONCLUSION

For the reasons given and in light of the law relative to the abandonment of registrations that are contested and relative to fraud on the Trademark Office, the abandonment without consent and the filing of a false Declaration of Non-Use against Registration No. 2,016,976 and the fraudulent filing of a Declaration of Use for Registration No. 2,115,124 and its apparent abandonment without consent, the Petition to Cancel should be granted for Petitioner on all of the Counts in the Petition.

June 13, 2006

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KAPALUA LAND COMPANY, LTD.)	
)	
Petitioner)	Cancellation No. 92/040,092
)	
v.)	DECLARATION
)	OF HWA K. CHAE
KAPALUA STRICKWAREN GmbH LTD)	
)	
Respondent)	
)	
)	
)	

Hwa K. Chae Declares as follows:

1. I am a paralegal assistant to W. Mack Webner, attorney for Petitioner in the above captioned matter.
2. The attached Exhibits 1 and 2 are true copies of the Respondent's Responses to Petitioner's First Set of Admissions to Respondent, Requests Nos. 10, 11, 12, 15 through 23, 26 and 39; and Answers To Petitioner's First Set of Interrogatories To Respondent Nos. 3 and 4.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 12 day of June 2006.


Hwa K. Chae

EXHIBIT 1

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

KAPALUA LAND CO., LTD.

Petitioner,

v.

KAPALUA STRICKENWAREN GmbH

Respondent.

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Cancellation No. 92/040,092

**RESPONDENT'S RESPONSE TO PETITIONER'S
FIRST SET OF ADMISSIONS TO RESPONDENT**

10. Admit that Respondent has never sold or offered for sale socks under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

11. Admit that Respondent has never sold or offered for sale underwear under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

12. Admit that Respondent has never sold or offered for sale shoes under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

15. Admit that Respondent has never sold or offered for sale laundry bleach under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

16. Admit that Respondent has never sold or offered for sale laundry detergent under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

17. Admit that Respondent has never sold or offered for sale perfumes under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

18. Admit that Respondent has never sold or offered for sale essentially oils for personal use under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

19. Admit that Respondent has never sold or offered for sale lipstick under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

20. Admit that Respondent has never sold or offered for sale rouge under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

21. Admit that Respondent has never sold or offered for sale eyeliner under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

22. Admit that Respondent has never sold or offered for sale hair lotion under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

23. Admit that Respondent has never sold or offered for sale dentifrice under the mark KAPALUA in the United States.

RESPONSE:

Admitted.

26. Admit that Respondent did not use the mark KAPALUA on all the goods listed in Registration No. 2,115,124 when Respondent filed its Section 8 Declaration on May 19, 2004.

RESPONSE:

Respondent admits that the mark was not used for socks, underwear and shoes. The mark was used for dresses, skirts, jackets, suits, pullovers, sweaters, pants, shorts, shirts, T-shirts, gloves and hats.

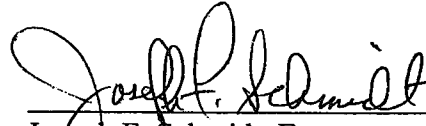
39. Admit that there has never been any use of the mark KAPALUA on laundry bleach, laundry detergent, essential oils or dentifrice anywhere in the world by any of the owners of the mark in the chain of title of Registration No. 2,016,976.

RESPONSE:

Admitted.

Dated: February 23, 2006

By:



Joseph F. Schmidt, Esq.

Gretchen M. Hosty, Esq.

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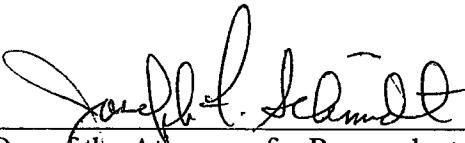
(312) 222-0818 (fax)

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF ADMISSIONS TO RESPONDENT** was served by first class mail, postage pre-paid, on this 23rd day of February upon:

W. Mack Webner
Leigh Ann Lindquist
SUGHRUE, MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202



One of the Attorneys for Respondent

EXHIBIT 2

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

KAPALUA LAND CO., LTD.

Petitioner,

v.

KAPALUA STRICKENWAREN GmbH

Respondent.

Cancellation No. 92/040,092

RESPONDENT'S ANSWERS TO PETITIONER'S
FIRST SET OF INTERROGATORIES TO RESPONDENT, NOS. 1-20

INTERROGATORY NO. 3

Identify each product on which Respondent has used Respondent's Mark.

ANSWER:

Pullovers, t-shirts and skirts.

INTERROGATORY NO. 4

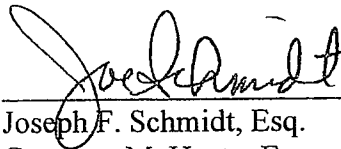
With respect to each of the products identified in Registration Nos. 2,016,976 and 2,115,124, state for each such product whether Respondent has used Respondent's Mark in commerce in connection with each product and, if so, how the mark was used for each product in commerce, the date on which Respondent's Mark was first used in commerce on each product, and identify all documents evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use.

ANSWER:

The mark has been used in commerce on pullovers, t-shirts and skirts. The date of first use is at least as early as 1994. Respondent objects to identifying all documents "evidencing and/or relating to the use of Respondent's Mark in connection with each identified product for each year from the alleged date of first use" on the ground that this request is overly burdensome. Without waiving this objection and in lieu of identifying documents, respondent will make available for inspection and copy representative documents after a Protective Order is agreed to and entered. Respondent will also make available for inspection and copying documents showing how the mark was used for each product.

December 16, 2005

By:

A handwritten signature in dark ink, appearing to read "Joseph F. Schmidt", is written over a horizontal line.

Joseph F. Schmidt, Esq.

Gretchen M. Hosty, Esq.

MICHAEL BEST & FRIEDRICH LLP

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(312) 661-2100

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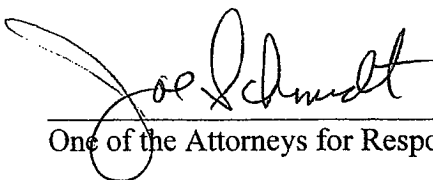
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of RESPONDENT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT, NOS. 1-20 was served by first class mail, postage pre-paid, on this 16th day of December upon:

W. Mack Webner
Leigh Ann Lindquist
SUGHRUE, MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-3202

via first class mail, postage prepaid, this 16th day of December 2005.

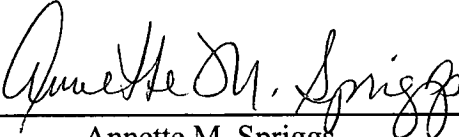


One of the Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Annette M. Spriggs, an employee of Sughrue Mion, PLLC hereby certify that on this 13th day of June, 2006, a true and correct copy of the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT** have been properly served, via First Class U.S. Mail, postage prepaid to:

Joseph F. Schmidt, Esquire
MICHAEL BEST & FRIEDRICH LLP
180 N. Stetson Avenue, Suite 2000
Chicago, IL 60601


Annette M. Spriggs